

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GUSHCLOUD PTE LTD; GUSHCLOUD
INTERNATIONAL USA, INC; and
GUSHCLOUD TALENT AGENCY, INC.,

Plaintiffs,

v.

TRACY WILLIS; WHE AGENCY, INC.,

Defendants.

No. 2:20-cv-1372-RSL

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: personal correspondence or other personal effects (publication
4 of which would cause embarrassment, be highly offensive, or invade someone's privacy
5 interests); material or information protected by a separate
6 confidentiality agreement under which the designating party is bound; confidential company
7 information, including but not limited to, customer lists, customer details, confidential contracts,
8 proprietary business information, trade secrets, pricing information, business strategy
9 information, or non-public financial details.
10

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential material (as
13 defined above), but also (1) any information copied or extracted from confidential material; (2)
14 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
15 conversations, or presentations by parties or their counsel that might reveal confidential material.
16 However, the protections conferred by this agreement do not cover information that is in the
17 public domain or becomes part of the public domain through trial or otherwise.
18

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
21 or produced by another party or by a non-party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
23 the categories of persons and under the conditions described in this agreement. Confidential
24 material must be stored and maintained by a receiving party at a location and in a secure manner
25 that ensures that access is limited to the persons authorized under this agreement.
26

27 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
28 ordered by the court or permitted in writing by the designating party, a receiving party may
29 disclose any confidential material only to:
30

31 PROTECTIVE ORDER – 2
32 (2:14-cv-00092-RSL)

33 Perkins Coie LLP
34 1201 Third Avenue, Suite 4800
35 Seattle, WA 98101-3099
36 Phone: 206.359.8000
37 Fax: 206.359.9000

1 (a) the receiving party's counsel of record in this action, as well as employees of
2
3 counsel to whom it is reasonably necessary to disclose the information for this litigation;

4 (b) the officers, directors, and employees (including in house counsel) of the
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6 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
7
8 agree that a particular document or material produced is for Attorney's Eyes Only and is so
9
10 designated;

11 (c) experts and consultants to whom disclosure is reasonably necessary for this
12
13 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy, imaging or discovery services retained by counsel to assist in the
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17 duplication, processing or production of confidential material, provided that counsel for the party
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19 retaining the copy or imaging service instructs the service not to disclose any confidential
20
21 material to third parties and to immediately return all originals and copies of any confidential
22
23 material;

24 (f) during their depositions, witnesses in the action to whom disclosure is
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26 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
27
28 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
29
30 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
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32 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
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34 under this agreement; or

35 (g) the author or recipient of a document containing the information or a
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37 custodian or other person who otherwise possessed or knew the information.

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41 4.3 Filing Confidential Material. Before filing confidential material or discussing or
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43 referencing such material in court filings, the filing party shall confer with the designating party
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45 to determine whether the designating party will remove the confidential designation, whether the
46
47 document can be redacted, or whether a motion to seal or stipulation and proposed order is
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warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for

1 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
 2 making appropriate markings in the margins).

3
 4 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
 5 parties must identify on the record, during the deposition, hearing, or other proceeding, all
 6 protected testimony, without prejudice to their right to so designate other testimony after
 7 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
 8 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential. If a
 9 party or non-party desires to protect confidential information at trial, the issue should be
 10 addressed during the pre-trial conference.

11
 12 (c) Other tangible items: the producing party must affix in a prominent place on
 13 the exterior of the container or containers in which the information or item is stored the word
 14 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
 15 the producing party, to the extent practicable, shall identify the protected portion(s).

16
 17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 18 designate qualified information or items does not, standing alone, waive the designating party’s
 19 right to secure protection under this agreement for such material. Upon timely correction of a
 20 designation, the receiving party must make reasonable efforts to ensure that the material is
 21 treated in accordance with the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23
 24 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 25 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 27 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 28 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 29 original designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 2 regarding confidential designations without court involvement. Any motion regarding
 3 confidential designations or for a protective order must include a certification, in the motion or in
 4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 5 conference with other affected parties in an effort to resolve the dispute without court action. The
 6 certification must list the date, manner, and participants to the conference. A good faith effort to
 7 confer requires a face-to-face meeting or a telephone conference.
 8

9 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 10 intervention, the designating party may file and serve a motion to retain confidentiality under
 11 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 12 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 13 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 14 other parties) may expose the challenging party to sanctions. All parties shall continue to
 15 maintain the material in question as confidential until the court rules on the challenge.
 16

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 18 LITIGATION
 19

20 If a party is served with a subpoena or a court order issued in other litigation that compels
 21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
 22 party must:
 23

24 (a) promptly notify the designating party in writing and include a copy of the
 25 subpoena or court order;
 26

27 (b) promptly notify in writing the party who caused the subpoena or order to
 28 issue in the other litigation that some or all of the material covered by the subpoena or order is
 29 subject to this agreement. Such notification shall include a copy of this agreement; and
 30

31 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 32 the designating party whose confidential material may be affected.
 33

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 3 material to any person or in any circumstance not authorized under this agreement, the receiving
 4 party must immediately (a) notify in writing the designating party of the unauthorized
 5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
 6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
 8 Agreement to Be Bound” that is attached hereto as Exhibit A.
 9

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 11 MATERIAL

12 When a producing party gives notice to receiving parties that certain inadvertently
 13 produced material is subject to a claim of privilege or other protection, the obligations of the
 14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 15 provision is not intended to modify whatever procedure may be established in an e-discovery
 16 order or agreement that provides for production without prior privilege review. The Parties agree
 17 to the entry of a non-waiver order under Fed. R. Evid. 502, as set forth herein.
 18

19 10. NON TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each receiving
 21 party must return all confidential material to the producing party, including all copies, extracts
 22 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
 23 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 24 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 25 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
 26 work product, even if such materials contain confidential material. The confidentiality
 27 obligations imposed by this agreement shall remain in effect until a designating party agrees
 28 otherwise in writing or a court orders otherwise.
 29
 30
 31

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 11/25/2020

/s Leah VanLandschoot

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DATED: 11/25/2020

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Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

Dated this 27th day of November, 2020.



Robert S. Lasnik
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Gushcloud PTE LTD et al. v. Willis et al.* in the United States District Court for the Western District of Washington, No. 2:20-cv-1372-RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____